

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DERRICK HARRIS, 763436,)	
Petitioner,)	
)	
v.)	No. 3:04-CV-800-N
)	ECF
NATHANIEL QUARTERMAN,)	
Director, TDCJ-CID,)	
Respondent.)	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner's motion to reopen the time to file an appeal has been referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b) and a standing order of reference from the district court. The Findings, Conclusions and Recommendation of the Magistrate Judge follow:

FINDINGS AND CONCLUSIONS

The Fifth Circuit Court of Appeals has remanded this action for a determination of the date Petitioner filed his notice of appeal.

In this § 2254 petition, the District Court entered final judgment on February 24, 2006. Therefore, the final day for filing a timely notice of appeal was Monday, March 27, 2006. *See* Fed. R. App. P. 26(a)(3). Petitioner's pro se notice of appeal is dated March 23, 2006, and is file stamped as received by the District Court on March 30, 2006. The Fifth Circuit Court of Appeals has remanded this action to determine whether Petitioner delivered his notice of appeal

**Findings, Conclusions and Recommendation
of the United States Magistrate Judge**


to prison officials for mailing on or before March 27, 2006. A prisoner's pro se notice of appeal is timely filed if deposited in the institution's internal mail system on or before the last day for filing. *See* Fed. R. App. P. 4(c)(1).

On October 3, 2006, the Court sent Petitioner a Magistrate Judge's Questionnaire to determine the date he delivered his notice of appeal to prison officials for mailing. On October 14, 2006, Petitioner responded that he delivered his notice of appeal to prison officials on March 23, 2006. The Court therefore finds that Petitioner mailed his notice of appeal on March 23, 2006.

RECOMMENDATION

For the foregoing reasons, the undersigned magistrate judge recommends that the District Court find that Petitioner mailed his notice of appeal on March 23, 2006.

Signed this 24th day of October, 2006.



PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO OBJECT**

The United States District Clerk shall serve a copy of these findings and recommendations on Petitioner. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings and recommendations must file and serve written objections within ten (10) days after being served with a copy. A party filing objections must specifically identify those findings and recommendations to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. The failure to file such written objections to these proposed findings and recommendations shall bar that party from a *de novo* determination by the district court. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Additionally, the failure to file written objections to proposed findings and recommendations within ten (10) days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996)(en banc).